



**Senate Fiscal Agency**  
P. O. Box 30036  
Lansing, Michigan 48909-7536

---

---

**BILL ANALYSIS**

---

---



**Telephone: (517) 373-5383**  
**Fax: (517) 373-1986**

Senate Bill 472 (Substitute S-1)  
Sponsor: Senator Wayne Schmidt  
Committee: Commerce

Date Completed: 10-27-15

### **CONTENT**

**The bill would amend Public Act 244 of 1999, which requires certain tobacco product manufacturers to deposit funds in escrow accounts, to do the following:**

- **Require the deposits to be made quarterly, rather than annually, according to a specific schedule.**
- **Require the quarterly deposits to be based upon units sold in that quarter plus an estimated inflation adjustment, and require an annual reconciliation deposit to be made.**
- **Require the manufacturers to certify their compliance quarterly, as well as annually.**
- **Allow a manufacturer to irrevocably assign to the State the manufacturer's interest in the escrow funds, and provide that the assignment would apply to all funds in the account and those subsequently deposited.**
- **Provide for assigned escrow funds to be withdrawn by the State and deposited into the General Fund as a credit against a judgment or settlement on a released claim brought against the manufacturer by the State or a releasing party.**
- **Modify the definition of "units sold".**

#### **Escrow Account Deposits**

The Act requires a tobacco product manufacturer selling cigarettes to consumers within the State to either 1) become a participating manufacturer and generally perform its financial obligations under the master settlement agreement; or 2) place into a qualified escrow account an amount based on units (individual cigarettes) sold. ("Participating manufacturer" means that term as defined in the master settlement agreement, which Michigan and 45 other states entered into with the U.S. tobacco industry in 1998.)

The bill would delete a requirement that the escrow fund deposits be made by April 15 of the year following the year in question. Instead, the deposits would have to be made in quarterly installments following the quarter in which sales took place. For this purpose, the calendar year would be divided into quarters beginning on first of January, April, July, and October.

Quarterly deposits would have to be made, and a certification of the deposits would have to be filed with the Department of Treasury, according to the following schedule:

- For sales occurring in the first quarter, deposits would be due April 30, and a certification would have to be filed by May 15, of the same year.
- For sales occurring in the second quarter, deposits would be due July 31, and a certification would have to be filed by August 15, of the same year.



- For sales occurring in the third quarter, deposits would be due October 31, and a certification would have to be filed by November 15, of the same year.
- For sales occurring in the fourth quarter, deposits would be due January 31, and a certification would have to be filed by February 15, of the following year.

For each of the quarters, the deposit would have to be based upon units sold in that quarter together with an estimated inflation adjustment provided by the Department. An annual reconciliation deposit would have to be made by April 15 of the year following the year in which the cigarettes were sold to account for the actual annual inflation adjustment. A statement of the reconciliation deposit and the final reconciled deposit figures would have to be included with the annual certification, due by April 30 of the year following the year in which the cigarettes were sold. An annual certification required under the Tobacco Products Tax Act also would have to include the final reconciled deposit figures.

Under Public Act 244, each tobacco product manufacturer that elects to deposit funds into escrow must certify annually to the Department that it is in compliance with these requirements. The bill would require this certification on a quarterly and annual basis.

The Act prescribes civil penalties for a manufacturer that fails to deposit funds into escrow as required, and states that each failure to make an annual deposit is a separate violation. Under the bill, each failure to make a quarterly or an annual deposit would be a separate violation.

The Act defines "units sold" as the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer during year in question, as measured by excise taxes collected by the State on packs (or "roll-your-own" tobacco containers) bearing the State's excise tax stamp. Under the bill, "units sold" also would include the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer during the year in question, as to which the State had power under Federal law to impose or collect an excise tax but did not.

The Act requires the Department of Treasury to promulgate regulations necessary to ascertain the amount of State excise tax paid on the cigarettes of the tobacco product manufacturer for each year. The bill, instead, would require the Department to promulgate regulations necessary to ascertain the number of units sold by the manufacturer for each year.

#### Assignment of Interest in Escrow Funds

Under the bill, if a tobacco product manufacturer elected to place funds into an escrow account, the manufacturer could make an irrevocable assignment of its interest in the funds to the benefit of the State. An assignment would be permanent and apply to all funds that were in the account or subsequently came into it, including funds deposited before the assignment was executed, funds deposited after the assignment was executed, and interest or other appreciation on the funds.

The tobacco product manufacturer, the Department of Treasury, and the financial institution where the account was maintained could amend the qualified escrow account agreement as necessary to effectuate an assignment of rights executed under these provisions or a withdrawal of funds from the account. An assignment would have to be made in writing and signed by a duly authorized representative of the manufacturer. It would become effective upon delivery to the Department and the financial institution.

Any escrow funds assigned to the State would have to be withdrawn by the State upon the request of the Treasurer and approval of the Attorney General. Any funds withdrawn would have to be deposited into the General Fund and be calculated on a dollar-for-dollar basis as a credit against any judgment or settlement that could be obtained against the manufacturer. (Under the Act, funds may be released from an escrow account to pay a judgment or



settlement on any released claim brought against the manufacturer by the State or a releasing party located or residing in the State. "Released claim" and "releasing parties" mean those terms as defined in the master settlement agreement. Very generally, released claims are claims related to the use, sale, distribution, manufacture, marketing, or side effects of, or exposure to, tobacco products, that are covered by the release set forth in the master settlement agreement. Releasing parties include states entering into the agreement and people or entities seeking relief on behalf of the public.)

Nothing in these provisions could be construed to relieve a tobacco product manufacturer from any past, current, or future obligations it could have under the Act.

MCL 445.2051 & 445.2052

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

The bill would result in a small amount of costs to the Department of Treasury and would have no impact on escrow funds. Moving to quarterly deposits into the escrow accounts would not have an impact in the long run; however, it would allow accounts to increase more rapidly for withdrawals needed to be made by the State. The Department would have minor costs to ensure quarterly deposits and reconciliation deposits. These costs would not require additional appropriations to the Department.

Fiscal Analyst: Cory Savino

S1516\sb472sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.